

## **REMARKS**

Applicant respectfully requests reconsideration of the above-referenced application. Upon entry of the above amendment, claims 6-10 and 15-18 remain pending in the present application. An Appendix is provided herewith setting forth all of the claims as pending after entry of the above amendment.

### **Priority**

The present application claims the benefit of the filing date of the Netherlands Patent Application No. 1013943, filed December 23, 1999, a certified copy of which is filed herewith.

### **Rejection of Claims 2 and 12 Under 35 U.S.C. §112, Second Paragraph**

Claims 2 and 12 have been rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant respectfully urges that this basis of rejection is made moot by the cancellation of these claims herein. Applicant reserves the right to pursue these or similar claims in another application. Consequently, Applicant requests withdrawal of this basis of rejection.

### **Rejection of Claims 1-3 Under 35 U.S.C. §102(b)**

Claims 1-3 have been rejected under 35 U.S.C. §102(b) as being unpatentable over U.S. Patent No. 4,348,379 to Kowalsky et al. ("Kowalsky"). Applicant urges that this basis of rejection is made moot by the cancellation of these claims herein without prejudice or disclaimer. Applicant reserves the right to pursue these or similar claims in another application. Applicant respectfully requests withdrawal of this basis of rejection.

### **Rejection of Claims 1, 2, 11 and 12 Under 35 U.S.C. §102(b)**

Claims 1, 2, 11, 12 have been rejected under 35 U.S.C. §102(b) as being unpatentable over WO 89/07399. Applicant urges that this basis of rejection is made moot by the cancellation of these claims herein without prejudice or disclaimer. Applicant reserves the right to pursue

these or similar claims in another application. Applicant requests withdrawal of this basis of rejection.

**Rejection of Claims 3-5, 13 and 14 Under 35 U.S.C. §103(a)**

Claims 3-5, 13 and 14 have been rejected under 35 U.S.C. §103(a) as being unpatentable over WO 89/07399. Applicant respectfully urges that this basis of rejection is made moot by the amendment of these claims herein. Applicant reserves the right to pursue these or similar claims in another application. Applicant requests withdrawal of this basis of rejection.

**Rejection of Claims 7-10 and 15-18 Under 35 U.S.C. §103(a)**

Claims 7-10 and 15-18 have been rejected under 35 U.S.C. §103(a) as being unpatentable over WO 89/07399 in view of the article "Screening Method For the Determination Of Peroxide Accumulation In Honey An Relation With HMF Content" (Journal Of Agricultural Research 35(3/4): 110-117 (1996)) by Kerkvliet ("Kerkvliet") and further in view of U.S. Patent No. 5,112,964 to Aoe ("Aoe"). Applicant respectfully traverses this basis of rejection.

The Office Action states,

As set forth above, WO teaches a composition containing 15% wheat bran, 35% wheat germ, and honey (Note example 1). The reference teaches the composition stimulates cerebral activity and improves digestion (Note abstract).

WO does not teach the instant properties of honey or instant additives.

Kerkvliet teaches that honey has antibacterial activity and wound healing properties, which is partly attributed to the presence of enzymes that liberate hydrogen peroxide. In turn the peroxide activity inhibits the growth of bacteria (Note pg. 11).

Aoe et al teach dietary fibers such as hemicellulose (found in wheat bran), pectin substances, and carboxymethylcellulose show physiological effects. These fibers prevent the absorption of

toxic substances in the intestine and are removed with the elimination of the fiber. Further, the fibers increase bowel movement. (Note col. 1, lines 1-35).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to expect honey to have the instant properties since Kerkvliet teaches the wound healing properties of honey.

Further, It [sic] would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the instant additives and WO's fibers have physiological advantages for the gastro-intestinal tract. One would be motivated to use another source of fiber such as carboxymethylcellulose (instant additive) to yield an additive effect.

It is submitted that a *prima facie* case of obviousness has not been established by the foregoing.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ 2d 1438 (Fed. Cir. 1991) MPEP 2142.

Applicant urges that a *prima facie* case of obviousness has not been established in regards to these claims, because, at least, the first criterion has not been met by the asserted combinations. Applicant submits that there is no suggestion or motivation in the references or in the knowledge generally available to one of ordinary skill in the art to combine reference teachings. "The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination." *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990) MPEP 2143.01.

Kerkvliet does allude to "a positive correlation...between the peroxide value of honey and its antibacterial characteristics...." However, Kerkvliet, WO 89/07339 and Aoe, neither singly or in combination, teach or suggest any correlation between the peroxide content of honey and its ability to aid in digestion. This correlation is found only in the instant application. Furthermore, none of the references, either singly or in combination, teach or suggest specifying the peroxide content of honey included in a composition with raw natural fibers. This limitation is disclosed only by the instant application. Therefore, it appears that impermissible hindsight reasoning, based solely on Applicant's disclosure, has been used to produce this combination of references. Consequently, Applicant respectfully requests withdrawal of this basis of rejection.

#### **Claim 6**

Although the first page of the Office Action indicates that claims 1-18 were rejected, no basis of rejection of claim 6 was asserted in the detailed action. Therefore, Applicant assumes that the indication that claim 6 was rejected on page 1 of the Office Action was a typographical error and respectfully requests notice that claim 6 is allowed.

#### **Information Disclosure Statement**

The Second Information Disclosure Statement included herewith includes two references F and G (as listed on Form PTO-1449) that were submitted in a prior Information Disclosure Statement (listed as references L and M therein). These two references were not previously considered by Examiner because of the absence of dates for each reference in the Information Disclosure Statement. These two references are being resubmitted for consideration. It is believed that these two references were publicly disclosed prior to the filing date of the present

application (December 20, 2000). However, Applicant reserves the right to establish the patentability of the claimed invention over any of these two documents should they be applied as references, and/or to prove that any of these two documents may not be prior art, and/or to prove that any of these two documents may not be enabling for the teachings they purport to offer. Consequently, Applicant respectfully requests reconsideration of these two references.

### **CONCLUSION**

Upon entry of the above amendment, claims 6-10 and 15-18 remain pending in the present application. It is respectfully submitted that claims 6-10 and 15-18 of the present application are in a condition for allowance and an early notice to such effect is earnestly solicited. If the Examiner believes that issues remain unresolved, it is requested that the Examiner contact the undersigned counsel for Applicant by telephone in order to expedite resolution and disposal.

Respectfully submitted,

  
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## APPENDIX

Claims 6-10 and 15-18 remain pending in the instant application.

Claims 6, 7, 15 and 16 are not being amended herein, but simply are being rewritten in independent form with all of the limitations contained therein as originally filed.

6. (Independent Form) [The composition of claim 5]A composition for the relief of occasional heartburn and digestive disorders, said composition comprising: honey, and raw food fibers, wherein said composition further comprises 20-40 weight percent wheat bran, based on the total weight of the composition, wherein said composition further comprises 20-40 weight percent wheat germ, based on the total weight of the composition, wherein said composition further comprises 20-60 weight percent honey, based on the total weight of the composition, wherein said honey is a non-denatured honey.

7. (Independent Form) [The composition of claim 1]A composition for the relief of occasional heartburn and digestive disorders, said composition comprising: honey, and raw food fibers, wherein said honey has a peroxide activity amount of greater than about 5 $\mu$ g of hydrogen peroxide per gram honey after 60 minutes as measured at a temperature of 21°C.

8. The composition of claim 6, wherein said honey has a peroxide activity amount of greater than about 5 $\mu$ g of hydrogen peroxide per gram honey after 60 minutes as measured at a temperature of 21°C.

9. The composition of claim 8, wherein said honey has a water content of less than about 17.5%.

10. The composition of claim 9, wherein said composition further comprises at least one additive selected from the group comprising calcium carbonate, zinc oxide, pectin or carboxymethylcellulose.

15. (Independent Form) [The compressed product of claim 14] A compressed product for the relief of occasional heartburn and digestive disorders, comprising:

a composition further comprising;

20-60 weight percent honey; and

20-40 weight percent raw food fibers; based on the total weight of the composition, wherein said composition further comprises 20-40 weight percent wheat bran, based on the total weight of the composition, wherein said composition further comprises 20-40 weight percent wheat germ, based on the total weight of the composition, wherein said honey is a non-denatured honey.

16. (Independent Form) [The compressed product of claim 11] A compressed product for the relief of occasional heartburn and digestive disorders, comprising:

a composition further comprising;

20-60 weight percent honey wherein said honey has a peroxide activity amount of greater than about 5 $\mu$ g of hydrogen peroxide per gram honey after 60 minutes as measured at a temperature of 21°C; and

20-40 weight percent raw food fibers; based on the total weight of the composition.

17. The compressed product of claim 15, wherein said honey has a peroxide activity amount of greater than about 5 $\mu$ g of hydrogen peroxide per gram honey after 60 minutes as measured at a temperature of 21°C.

18. The compressed product of claim 17, wherein said honey has a water content of less than about 17.5%.